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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,699	07/12/2001	Hiroshi Miura	211375US2	1573

22850 7590 05/12/2005

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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AGUSTIN, PETER VINCENT

ART UNIT	PAPER NUMBER
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2652

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No. 09/902,699	Applicant(s) MIURA ET AL.	
Examiner Peter Vincent Agustin	Art Unit 2652	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

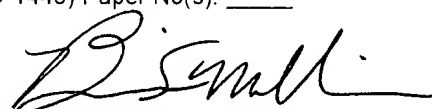
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
6. ☒ Newly proposed or amended claim(s) 1-3, 6-12, 14 and 15 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 1-3, 6-12, 14 and 15.  
Claim(s) objected to: 10 and 22.  
Claim(s) rejected: 22.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
**BRIAN E. MILLER**  
PRIMARY EXAMINER

Continuation of 5. Applicant's reply has overcome the following rejection(s): rejection of claims 1-3, 6-12 & 14 under 35 U.S.C § 103(a) and rejection of claims 1-3, 10-12 & 22 under 35 U.S.C. § 112 - 1st paragraph.

Continuation of 11. does NOT place the application in condition for allowance because:

- a. Claims 10 & 22 are objected to because of the following informalities:

Claim 10, line 9 and claim 22, line 10: "the at least one recording mark" should be --at least one recording mark--.

Claim 22, line 9: "varying a power level of one of the at least two laser beams" should be deleted; and

"to set" should be changed to --setting--. (note the changes made by the Applicant to claims 1 & 10 in order to overcome the rejection under 35 U.S.C. § 112 - 1<sup>st</sup> paragraph).

- b. Claim 22 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobayashi (US 5,144,615) in view of Kasami et al. (US 6,312,780).

In regard to claim 22, Kobayashi discloses a phase-change recording medium (Figure 1, element 20) comprising a recording layer (Figure 4, element 23) in which multi-leveled information can be recorded by an information recording method for recording multi-leveled information in a phase-change recording medium by the application of a laser beam (from element 11) thereto, comprising: modifying a power level of said laser beam into two or more power levels so as to correspond to said multi-leveled information (Figure 2, element 104; column 2, line 61 thru column 3, line 13); and setting a plurality of recording mark units (column 3, line 12: record spot) including therein at least one recording mark to be formed, based on said modified power levels, so as to correspond to said multi-leveled information, wherein said recording layer comprises Sb and Te, and at least one element selected from the group consisting of Ag, In, Ge, Ga, B, Si, and Al (see column 4, lines 47-50). However, in regard to claim 22, Kobayashi does not disclose that the Sb/Te content ratio is 2 to 5 in terms of atomic %.

Kasami et al. disclose in Figures 10 & 13 a recording layer having an Sb/Te content ratio of 2 to 5 in terms of atomic %. It would have been obvious to one of ordinary skill in the art at the time of the invention by the Applicant to provide the recording layer of Kobayashi with a material comprising of Sb and Te with an Sb/Te content ratio of 2 to 5 as suggested by Kasami et al., the motivation being to provide a phase-change recording medium with optimum characteristics (see column 12, lines 11-15).

- c. The Applicant's arguments filed April 26, 2005 have been fully considered but are not persuasive. The Applicant argues on page 8, last two paragraphs that "the ratio of Sb to Te disclosed by Kasami in Figures 10 and 13 is 2/5, i.e., 0.4 (the content of Te is greater than the content of Sb), which is different than the claimed range of 2 to 5", and therefore, claim 22 allegedly patentably distinguishes over the applied references. The Examiner disagrees. Claim 22 does not recite the word "range". Claim 22 recites "a Sb/Te content ratio of 2 to 5", which is interpreted by the Examiner as a compound having 2 parts Sb and 5 parts Te, and which is read to correspond to Figures 10 & 13 of Kasami et al.